



**Public Policy Research Center**  
 Центр Анализа Общественных Проблем

# PPRC Newsletter

**Dear Readers!**

The draft law "On Local Self-Government in the Republic of Kazakhstan" prepared by the Government of the RK is currently introduced for discussion to the Working Group of the State Commission for the Development and Concretization of the Program of Democratic Reforms in the RK.

This Newsletter offers for your attention observations and comments to the draft law prepared by Meruert Makhmutova, Director of the Center, on the basis of participation in two meetings of the Working Group of the State Commission and the draft law analysis.

## Local Government Reform and Democratization of the Political System

### Introduction

In 11 years after the adoption of the current Constitution several attempts were undertaken to develop a legislative basis for the implementation of the constitutional human right of citizens on the establishment and development of local self-government (LSG). They have been unsuccessful.

The Government of the RK has developed another draft law «On Local Self-Government in the Republic of Kazakhstan», which is introduced for the discussion to the Working Group of the State Commission on Democratization.

Does this draft law meet the expectations accumulated over the years? Will it promote the establishment of a viable local government, which complies with the basic principles of the European Charter of Local Self-Government?

In order for this attempt to succeed, we need to adopt a law that would allow the establishment of real local self-government, meeting the needs not only of local communities but also of the whole country. The current high level of centralization and concentration of power, alienation of people from the authorities, population's distrust in akims vertically, appointed from the top?, constrain further economical growth.

We must ensure democratization of governance so that Kazakhstan can join 50 of the most competitive countries, to identify the most rational way of local self-government reform to make people realize that the quality of governance depends on their opinion. Local government reform can give a new stimulus to economic development.

### What LSG model does the Government propose?

The draft law of the Government suggests creating LSG "within the limits of an aul (village), settlement, city district, where the population residence is compact. In cities of District (oblast) and national significance and the capital, several independent local communities can be organized". Here the Working Group made an amendment: "within the limits of a block, micro-region", which reduces to zero the attempt to establish LSG. Because the phrase "within the limits of a block, micro-region" clearly shows that we again are proposed to establish LSG not as a public power authority responsible for local issues, having its executive

and representative bodies, its own budget and property, but as a volunteer movement or a public organization.

The approach to LSG as having the status close to NGO, which defined the draft law in 2000, was fairly criticized six years ago. Professor J.Regulski, the author of Polish LSG reforms and former Polish Minister of Local Administration Reform, expressed one of the most authoritative opinions of that time: *«I have some doubt in content and nature of LSG draft law. The suggested system falls short of the local administration insight. Local administration is not voluntary population's association. It is an authority responsible for solving certain issues. The EU Charter of Local Self-Governments agreed with the member-states of the Council of Europe provides a clear definition. The draft law does not comply with these standards, and therefore I do not think it will initiate the civil society formation in the fields»*.<sup>1</sup>

As a result, the Parliament returned the draft law to the Government for revision.

After six years the Government slightly «dusted» the old draft law and presented it as a principal novelty suggesting us in fact making the same mistake.

LSG, as the more effective way to utilize public resources than the centralized one, is the main argument in favor of LSG development in the world. The main LSG document is European Charter of Local Self-Government, signed in 1985 in Strasbourg.

The Charter's preamble clarifies the requirement for LSG establishment, which helps to understand why the right to establish LSG is guaranteed by the Constitution of the Republic of Kazakhstan.

- The local authorities are one of the main foundations of any democratic regime.
- The right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe.
- The existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen.

<sup>1</sup> Recommendations developed in the framework of TACIS Project "Decentralization in Kazakhstan: A Study for further programming purposes".

- The safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralization of power.

- This entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfillment.

"Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.", – the Charter explains.

I will analyze the draft law provisions considering the Charter principles.

Draft law developers from the Government confuse the notions of political party and local self-government. The Ministry of Justice copies the permissive principle of political parties' registration for the establishment of local self-government bodies, making no difference between them. For example, the draft law says: "Conditions to enter the local associations for the citizens of the Republic of Kazakhstan other than provided under this item should not be established». And further Item 6 of Article 1 provides detailed description of the procedure of signature collection for the introduction of local self-government and how akims will verify the authenticity of the signatures.

The Governmental draft law suggests retaining the current system of local public administration, establishing at the same time LSG bodies consisting of Kenes – representative LSG body, Tor-Aga – executive LSG body and Tor-Aga apparatus. The draft law of 2000 named these bodies slightly differently: Kenes, Zhetekshi and Zhamiyat, having the same functions. There is a good Kazakh proverb: «Екі қоянды бір қазанға сыймайды», which means that Tor-Aga and Akim, Kenes and Maslikhat will not be able to live in harmony with each other at the same level of governance. This is what Parliament said in 2000 when returned the draft law to the Government. This should be repeated now. We consider such duplication of power structures unsuitable either from the position of effective government or from the position of finances.

Unfortunately, even the law-makers realize that the model suggested in the draft law lacks feasibility. They propose to try this draft law as a pilot project to see whether it works or not.

### **What funds do the draft law developers suggest for local self-government bodies?**

The draft law developers from the Government avoid using the word "budget", they limit themselves to: 'estimate' (2000) or 'financial plan' (2006). There is no progress in 2006 compared to the draft law of 2000, and the differences are slight:

- Will the transfers be made from the local budget (2000) or from the state budget (2006);
- Voluntary taxation money collected in the local community (2000), or funds constituted of voluntary fees of local community members (2006 r.);

- Revenues from the non-commercial organizations established by local community and from the lease of the property, which the local community possesses (2000), or revenues from services (2006).

The draft law does not foresee any real financial basis for LSG functioning, which seriously hampered the introduction of local self-government in 2000. In 2006, as in 2000, villages and settlements had no local budget. The draft law foresees allocations from the budget to local self-government bodies (irrespective of their level). During the draft law discussion in 2000 the Ministry of Finance many times referred to the Law on the Budget System and emphasized, that subventions can be allocated from the District (oblast) budget only to the rayon budgets (cities of district significance); there are no budgets below rayon level<sup>2</sup>. That is why the Ministry insisted on the exclusion from the draft law the provision on budget allocations to local self-government for revenue formation.

«In this case, which revenue sources out of those foreseen in the draft law remain for the local self-government bodies? The possibility to establish commercial enterprises and independent taxation of population. The establishment of commercial enterprises raises doubts as this might make the local self-government bodies enter an unfair competition with private sector, forcing out private enterprises. Taxation will cause problems as the local self-government body will be the owner of enterprise and regulating authority at the same time. Voluntary taxation of population is as well below criticism, because people in villages and settlements are not well-to-do<sup>3</sup>», – we wrote about this in 2000, and now we repeat the same. In spite of the growing income for the population, the rural population income is still low due to the lack of job opportunities and therefore stable income source.

### **Recommendations**

In order to clearly identify the basic principle - what should be understood under the local self-government - we propose to include the definition from the European Charter into LSG draft law: "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population."

There is no need to describe the pseudo-democratic procedures for signature collection and verification by akims. The authorities should establish a legislative basis for fulfillment of constitutional right on the establishment of local self-government bodies.

The reform of the entire system of local government should be simultaneous. In 2002 we wrote in the LSG Development Concept that the State programme for the creation and development of LSG in the Republic of Kazakhstan is required to define short-term, mid-term and long-term prospects. We consider it will be more efficient to divide the process of creation of LSG at different levels by stages, and fix this in the State program.

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<sup>2</sup> B. Zhamishev, First Vice-Minister of Finance, N. Korzhova, Vice-Minister of Finance, spoke about this during the discussion of the draft law.

<sup>3</sup> M. Makhmutova «Local Government in the Republic of Kazakhstan», chapter in the book «Development new rules in the old environment», OSI, Budapest. – 2001

The experience of Central and Eastern Europe proves that the local government reform should start from the basic level. In Kazakhstan we propose **to establish the local self-government authorities at the city district level, regional town, settlement, aul (village), aul (rural) district at the first stage.** The authority at this stage is still represented by akims only, there are no maslikhats and independent budgets.

Maslikhats are local representative bodies elected by the population, they should be recognized as the representative bodies of local self-government with no duplication of Maslikhats by Kenes in the cities. Maslikhats should be provided for and elected at the rural level.

Taking into consideration the forthcoming elections of akims, elected akims should be recognized as local self-government executive bodies without duplicating them with «Tor-Aga», as they have the same terms of reference.

This way we will avoid excessive power structures proposed in the 2000 draft law and recurring in 2006 Government draft law. This will prevent an increase of expenditures for parallel elections: of akims and tor-agas, maslikhats and keneses and reduce their maintenance expenditures. Vice-Minister of Economy and Budget Planning gave the figure of 27 billion (?) Tenge required for the maintenance of tor-aga offices all over the country.

The Increase of State budget expenditures by 609 billion (45%)Tenge caused inflation growth in 2005, that is why when establishing local government the most rational way will be to optimize the management and expenditures.

It is important to establish local self-government bodies at the basic governance level simultaneously all over the country. The launch of pilot local self-government projects in separate districts or regions will be useless, which is proved by pilot elections of rural district akims in 2001 and 2005 and rayon akims in 2005. What were the results of the elections? Election pledges of candidates for the positions of rural districts akims were not supported by appropriate budgets. An elected rural akim remains a state employee and a member of the team of the regional akim, subordinate to him. We cannot say that the elections of akims improved their accountability to the population and improved the quality of services.

At the initial stage the newly established local self-government bodies might have narrow terms of reference, giving them an opportunity to adapt to increased responsibilities.

To make LSG bodies able to solve "local" issues they should have appropriate budgets. For this purpose the Budget Code should be amended in order to place local self-government budgets in the budget system.

Consolidated, the public administration budgets and local self-government budgets should be identified as public finances. The public finances should include as well the budgets of the National Oil Fund, new institutes «Kazyna», «Samruk» etc.

After that the Budget Code should define types of taxes and payments to the local self-government budgets. In our opinion, the following taxes at the level of aul (rural) district, city district or rayon city should be included:

- 1) individual income tax by the norms of revenue distribution, set by oblast maslikhat;
- 2) social tax by the norms of revenue distribution, set by oblast maslikhat;
- 3) property tax for physical entities, individual entrepreneur and legal entities;
- 4) land tax;
- 5) single land tax;
- 6) transport tax for physical and legal entities;
- 7) excises;
- 8) payment for use of land.

The Budget Code should as well consolidate types of payments to the future local self-government budgets. Probably, due to low tax potential at the rural level taxes and payments will be insufficient. To provide the minimal level of budget supply the higher budget should allocate leveling transfers to support schools, feldsher-midwife station or hospitals.

Thus, the creation of LSG should be accompanied by the re-distribution of authority and, accordingly, revenues and expenditures between the government and local self-government.

Irrespective of the place of residence, every citizen pays taxes only once (fulfillment of the principle of taxation equity). He/she does not care to which budget his/her money goes to, he/she wants to receive services and welfare in turn.

We propose the local self-government model<sup>4</sup>, which has points in common with the draft law, initiated by S. Abdrakhmanov, deputy of the Majilis in 2005. However in 2005 the Ministry of Justice combined his draft law with the draft of the Working Group of the National Commission on Democratization (piling tor-aga, kenes, court of byi, council of aksakals etc.), which removed the essence of the proposed draft law. Within a year, in 2006, the Ministry of Justice proposed to us the 2000 draft law with slightly amended formulations, signed by almost every key minister and vice-minister.

On our opinion, the only possible way for Kazakhstan is to reform the current local public administration and transfer functions and budgets in order to create a viable local self-government.

The implementation of this evolution model of LSG requires amendments to the current legislation, starting with the Constitution, the Law "On Local Self-Government", the Budget Code, the Law "On Elections" etc.

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<sup>4</sup> Concept of LSG Development (2002), Draft law on LSG (2004) and other PPRC publications.